

** E-filed on 1/19/05 **

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON,

Plaintiffs,

v.

BALBIR SINGH, et al.,

Defendants.

Case Number C 04-00021 JF

ORDER RE: SUPPLEMENTAL
BRIEFING ON PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT

[Docket No. 38]

Plaintiffs Certain Underwriters at Lloyd's, London ("Underwriters") move for partial summary judgment. Underwriters' motion is opposed by Defendant Balbir Singh, individually and doing business as ("d.b.a.") West Valley Cab Co., ("Balbir Singh") and Defendants Michael Sherburne and Alice Sherburne (collectively "Sherburne Defendants"). The Court has read the moving and responding papers and has considered the oral arguments of counsel presented on January 14, 2005. As set forth below, the parties shall submit supplemental briefing to assist the Court in its determination as to whether it should grant Underwriters' motion.

At the time of the events giving rise to this lawsuit, Balbir Singh operated a company called West Valley Cab. He had no employees; instead, his drivers paid him a certain amount of money per week to lease cabs from him, if necessary, and to obtain insurance and cover other

1 expenses. He purchased insurance through Anil Sood (“Sood”), who was doing business as
 2 AASK Insurance Services. Between February and April 2002, Sood applied for insurance on
 3 behalf of Balbir Singh d.b.a. West Valley Cab.¹ The application was made to Evolution Insurance
 4 Brokers Services, International, Inc. (“Evolution”), an insurance broker, which in turn presented
 5 the application to Insurance Exchange Brokers Services (“IEBS”). IEBS underwrites insurance
 6 coverage under authority from Underwriters. In July 2002, Underwriters issued a “Commercial
 7 Business Auto Certificate” with Certificate Number LTXA02040253 (“the Underwriters policy”)
 8 and effective dates of April 16, 2002, through April 16, 2003. This insurance policy provided
 9 liability coverage to Balbir Singh d.b.a. West Valley Cab for damages caused by an accident and
 10 resulting from the ownership, maintenance, or use of a covered vehicle operated by an approved
 11 driver. The policy also established Underwriters’ duty to provide a defense with respect to a
 12 claim covered by the policy.

13 Dharam Singh began driving for West Valley Cab in August 2002. He drove his own
 14 1996 Plymouth van, with a Vehicle Identification Number (“VIN”) of 1P4GP44R3TB179990.
 15 Title to the van was in the name of “Dharam Singh, dba West Valley Cab.” Dharam Singh paid
 16 Balbir Singh \$200 per week, and in return, pursuant to an oral agreement, he was to receive
 17 liability insurance coverage. Balbir Singh testified that when Dharam Singh started driving for
 18 West Valley Cab, Sood was given paperwork to add Dharam Singh and his van to the insurance
 19 policy, and that afterward Sood told him that “everything [was] fine” with regard to obtaining
 20 such coverage. Dharam Singh testified that, within a few days of beginning to drive for West
 21 Valley Cab, he received an insurance card from Balbir Singh.² The “Insurance Identification
 22 Card” to which he referred during his testimony states that it was issued by “Evolution Insurance
 23 Brokers Specialty, Inc.” for insured “Mr. Singh/West Valley Cab” under Policy Number
 24 _____

25 ¹ The Court notes that some pages of the application materials bear different dates than
 26 others. A declaration submitted by an employee of Insurance Exchange Brokers Services states
 27 that the application was submitted in April 2002.

28 ² Balbir Singh testified that his nephew told him that he (i.e., the nephew) gave the
 insurance card to Dharam Singh.

1 LTXA02040253,³ that it covered a 1996 Plymouth with the VIN 1P4GP44R3TB179990, and that
 2 the dates of coverage were April 16, 2002, through April 16, 2003.

3 On the evening of October 28, 2002, Dharam Singh was driving his van when he rear-
 4 ended a motorcycle driven by Michael Sherburne, which in turn collided with the back of an
 5 automobile driven by Defendant Thac Dinh Te. All three vehicles sustained some degree of
 6 damage, and Michael Sherburne allegedly suffered serious injuries requiring hospitalization and
 7 resulting in hundreds of thousands of dollars of medical bills. Later that night, Evolution received
 8 by fax a handwritten request on the letterhead of AASK Insurance Services, Sood's company,
 9 directed to "Rosa" and requesting that Dharam Singh and a 1995 Plymouth with the VIN
 10 1P4GP44R3TB179990 be added to the Underwriters policy. Then, on October 29 or 30, 2002,
 11 IEBS received from Evolution a request to add Dharam Singh and a 1995 Plymouth with the VIN
 12 1P4GP44R3TB179990 to the Underwriters policy. On October 30, 2002, IEBS issued an
 13 endorsement adding the van to the policy, effective as of October 28, 2002, the date of the
 14 request.⁴ In July 2003, the Sherburne Defendants filed an action against Dharam Singh, Balbir
 15 Singh, and Sood in Santa Clara Superior Court.⁵ On January 5, 2004, Underwriters filed the
 16 instant case in this Court alleging fraud, negligence, and unfair competition and seeking, among
 17 other things, rescission of the endorsement adding Dharam Singh's van to the Underwriters
 18 policy, restitution, compensatory damages, and declaratory relief with respect to the underlying
 19 personal injury action by the Sherburne Defendants and claims arising out of the accident.

20 Underwriters move for partial summary judgment on a number of grounds, seeking "an
 21 order that they are not obligated to defend or indemnify Balbir Singh, Dharam Singh, or any
 22 other person for any losses or liabilities arising out of the motor vehicle accident between
 23 Dharam Singh and Michael Sherburne, on October 28, 2002." A motion for summary judgment

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 25 ³ This policy number is the same as the certificate number for the Underwriters policy.

26 ⁴ Dharam Singh was not added to the policy, because no motor vehicle record was
 27 received for him.

28 ⁵ As of the time of the briefing on the instant motion, trial in the underlying state lawsuit
 was set for January 25, 2005.

1 should be granted if there is no genuine issue of material fact and the moving party is entitled to
2 judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
3 242, 247-48 (1986). Material facts are those that might affect the outcome of the case under the
4 governing law. *Anderson*, 477 U.S. at 248. There is a genuine dispute about a material fact if
5 there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

6 Underwriters present numerous arguments as to why they are entitled to rescission or
7 reformation of the endorsement adding Dharam Singh's van to the Underwriters policy. Among
8 other things, Underwriters argue that Balbir Singh could not, under California law, purchase
9 insurance for a loss that already had occurred; that no insurance contract was created as a result
10 of the fax sent on October 28, 2002, because there was no meeting of the minds regarding the
11 material fact of the accident that had occurred several hours earlier; and that Underwriters are
12 entitled to rescission or reformation due to concealment of the material fact of the accident in the
13 request for additional insurance coverage. All of Underwriters' arguments are premised on the
14 assumed fact that the Underwriters policy did not cover Dharam Singh's van prior to the issuance
15 of the endorsement dated October 30, 2002. However, Underwriters completely fail to address
16 Dharam Singh's testimony that he received an insurance card evidencing coverage of his van
17 within a few days of starting to drive for West Valley Cab, approximately two months before the
18 accident.⁶

19 Combining Dharam Singh's testimony and evidence of the insurance card itself⁷ with
20 Balbir Singh's testimony that he asked Sood to add Dharam Singh and his van to the insurance
21 policy in August 2002, the Court is not convinced that Underwriters have met their burden on
22 summary judgment. No party explains how the insurance card could have existed and been in
23

24 ⁶ While no party discussed this testimony in its briefs as part its arguments regarding
25 summary judgment (Balbir Singh and the Sherburne Defendants made only passing reference to
26 it in their recitation of the facts), the Court cannot ignore it in ruling on Underwriters' motion for
summary judgment.

27 ⁷ At oral argument, the Sherburne Defendants asserted that Dharam Singh presented the
28 insurance card to the police at the time of the accident. However, they failed to identify specific
evidence in the record to that effect.

1 Dharam Singh's possession months before the accident if there was no coverage.⁸ The
 2 declaration by an IEBS employee that no changes were made to the policy between the date of its
 3 issuance and October 30, 2002, and that Dharam Singh's van was not listed on the policy on
 4 October 28, 2002, does not in and of itself show the absence of a triable issue of fact. However,
 5 because the parties have not addressed the issues raised by the insurance card at all, the Court
 6 will seek supplemental briefing rather than simply denying the motion outright.⁹

7 Accordingly, the parties shall submit additional briefs, along with supporting evidence,
 8 addressing the following issues: (1) the authenticity of the insurance card and (2) the relationship
 9 between Evolution Insurance Brokers Specialty, Inc., the company listed as having issued the
 10 insurance card, and Underwriters. Underwriters' brief shall be filed on or before January 26,
 11 2005, and Defendants' briefs shall be filed on or before February 2, 2005. Each brief shall not
 12 exceed ten pages, exclusive of supporting evidence.

13 IT IS SO ORDERED.

14
 15
 16 DATED: January 19, 2005

17
 18 /s/ (electronic signature authorized)
 19 JEREMY FOGEL
 20 United States District Judge
 21
 22
 23

24 ⁸ Underwriters' theory, mentioned in passing at the hearing on the instant motion, that
 25 Sood typed up the insurance card himself hardly is sufficient to justify granting summary
 judgment in their favor.

26 ⁹ Although the coverage issue discussed above represents the Court's predominant
 27 concern for present purposes, the Court also notes that some of Underwriters' arguments are
 28 premised on alleged knowledge and/or actions by Balbir Singh and Sood with respect to the
 October 28, 2002, fax that are disputed.

1 This Order has been served upon the following persons:

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